

Application No.: 09/963,513

Docket No.: 22135-00013-US

REMARKS***Introduction***

Receipt of the Office Action mailed April 4, 2005 is acknowledged. The present amendment proposes to cancel claim 11 and claim 12 without prejudice or disclaimer and features thereof would be incorporated into claim 1. Claim 16 would be amended to depend on claim 1. No new matter would be inserted since the amendments are supported by original claims. No new issues would be raised since the subject matter of claims 11 and 12 had been considered previously. Furthermore, the present amendment is believed to place the instant application in condition for allowance. Entry of the amendment and favorable reconsideration are earnestly solicited.

Claim Rejections- 35 USC § 103

Claims 1-6, 8-10, 13-15, and 17-19 stand rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over JP 406261673A in view of Crevasse U.S. Pat. No. 5,215,495 and EP 340776A1. While not acquiescing to the propriety of this rejection, it is respectfully submitted that in view of the instantly proposed amendment, all claims would include features of claims 11 and 12 that are not here rejected. As such, this rejection would be obviated. Withdrawal of the rejection is respectfully requested.

Claims 11-12 and 16 stand rejected under 35 U.S.C. 103(a) as allegedly being unpatentable JP 406261673A, in view of Crevasse and EP 340776A1, as applied above, and further in view of Kubo *et al* US Pat. No. 4,428,402. This rejection is respectfully traversed for at least the following reasons.

The Examiner acknowledges that none of JP 406261673A, Crevasse, and EP 340776A1 teach or suggest a casing of synthetic polymers such as polyamides or polyolefins. Nor do any of these references teach or suggest thermoplastic starches. However, the fact that Kubo discloses a nylon casing does not render the present invention obvious. Namely, there would have been no motivation to incorporate a synthetic material of Kubo *et al* into the any of the casings of JP 406261673A, Crevasse or EP 340776A1, taken alone or in any combination.

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First, with respect to Crevasse, its disclosure relates solely to fibrous sausage casings, *i.e.* to casings based on fiber-reinforced cellulose (see col. 1, l. 7-8). In addition, Crevasse teaches a shirred one-piece casing article (col. 2, l. 48-49), just long enough to encase a single sausage. During filling, the casing is not turned inside-out as claimed.

On the other hand, the present invention relates to a casing having (i) an inner cavity, (ii) two ends, one of which is tied off, wherein the tied-off end of the concertina is turned inward into the inner cavity, such that the tied-off end includes a closure placed on a turned-in section of the concertina, such that when the casing is filled, the concertina is turned inside out and the closure is on the outside thereof; and (iii) an outer surface provided with a coating or impregnation comprising a food additive, wherein the additive imparts a color, an odor, an aroma, and/or a flavor to the casing so as to enable even transfer of the additive to foodstuffs..

Thus, in addition to the fact Crevasse fails to teach or suggest synthetic materials or thermoplastic starch based casings, Crevasse is devoid other features recited in present claim 1. For example, Crevasse fails to teach or provide any motivation to employ a food additive that could impart color, odor, aroma or flavor to the foodstuff. JP '673 does not provide for these deficiencies. JP '673 does not teach the claimed synthetic materials. Furthermore, although the JP teaches to apply a non-toxic separating agent to the casing, this agent is not an additive that provides color, odor, aroma and/or flavor, and thus, is not a "food additive" within the meaning of claim 1. To wit the only separating agent disclosed in the Japanese reference is glycerol. Glycerol is a colorless liquid without any taste or odor and it does NOT impart a color, an odor, an aroma, and/or a flavor to the casing so as to enable even transfer of the additive to foodstuffs. Thus JP '673 does not teach or suggest the claimed food additive.

By combining JP '673 with Crevasse, a person of ordinary skill in the art could not have arrived at the present invention, since neither reference teaches or suggest an outer surface provided with a coating or impregnation of a food additive. Furthermore, there is also a substantial difference between cellulose fibrous casings and casings based on thermoplastic starches or on synthetic polymers, such as the fact that cellulose casings readily absorb liquid smoke and other liquid components (such as glycerol). As such, the mere fact that Kubo

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employs a nylon casing would not have suggested to one of skill in the art to modify JP '673 or Crevasse.

EP 0 340 776 also does not provide for the deficiencies mentioned above. Namely, again, like the primary references, EP 776 teaches cellulosic food casings. All examples in the EP reference pertain to cellulosic casings. Casing made up of other materials are mentioned (p. 15, lines 20-21), but are clearly not preferred. The food casings of EP '776 comprise a substrate, a water-soluble dry colorant under layer in non-diffusible association with the substrate, and binder-sealant layer superimposed over an entirely enclosing the colorant layer top surface in adhering relationship. The dry colorant under layer is not a continuous layer, but rather forms indicia in a predetermined pattern, which may *e.g.* resemble grill marks (p. 4, lines 24-25). The binder-sealant has a melting point above 100°F and is water-insoluble (p. 3, lines 28-32). After filling the casing, the food product is in direct contact with the binder-sealant top layer (p. 4, lines 30-31). The food-containing casing is then exposed to elevated temperature, which causes a complete transfer of the binder-sealant covered indicia from the casing inner surface to the outer surface of the food product. The binder-sealant covered indicia of EP '776 is not evenly transferred to the foodstuff, as recited in present claim 1.

A combination of Crevasse, JP '673 and EP '776 does not render obvious the subject matter of the presented amended claim 1, and these deficiencies are not provided for by Kubo *et al.* That is, although Kubo teaches casings of both regenerated cellulose (col. 4, lines 9-10) as well as casings made of other shirrabable natural or synthetic materials, such as polyethylene, polyester, or nylon (poly-amide), there would have been no motivation to use synthetic materials of Kubo. This is because, among other things, the casing and end closure of Kubo, as shown in Fig. 1 and 2 of the reference, could not be used in a filling process in which the casing is turned inside-out. Rather, Kubo's casing is filled in a conventional way, as illustrated in Fig. 3. In addition, there is simply no motivation to include a food additive that could be transferred from the casing to the foodstuff and thereby impart color, odor, aroma and/or flavor. In fact, none of the four references relied upon teach or suggest this feature.

The instant rejection is therefore believed to be improper and should be withdrawn.

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Claim 7 stands rejected under 35 USC § 103(a) as allegedly being unpatentable over JP 6-261673, in view of Crevasse and further in view of JP 51-079748. This rejection is respectfully traversed.

First, claim 7 now includes features of claims 11 and 12. Moreover, JP '748 was apparently cited for disclosing polyvinylpyrrolidone (PVP). However, in JP '748, PVP is part of a slurry which is laminated on a porous base material (paper, cloth or the like) and thereafter constitutes an integral part of the food casing. It is not employed to produce a coating on an already existing casing. There is no motivation provided by JP '748 to use PVP to produce a coating on a casing as claimed. This rejection is therefore improper and should be withdrawn.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 22-0185, under Order No. 22135-00013-US from which the undersigned is authorized to draw.

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Respectfully submitted,

By 

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